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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH DAVID WELLS,

Defendant and Appellant.

E072379

(Super.Ct.No. FWV18004507)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stephan G. Saleson, Judge. Affirmed.

Arthur Martin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

**FACTUAL AND PROCEDURAL HISTORY**

**A. PROCEDURAL HISTORY**

On December 10, 2018, a felony complaint charged defendant and appellant Joseph David Wells with assault with a deadly weapon, a motor vehicle, under Penal

Code section 245 subdivision (a)(1) (count 1); hit and run driving resulting in serious bodily injury under Vehicle Code section 20001, subdivision (b)(2) (count 2); driving or taking a vehicle without consent under Vehicle Code section 10851, subdivision (a) (count 3); and hit and run driving resulting in property damage, a misdemeanor, under Vehicle Code section 20002, subdivision (a).

As to count 2, the complaint also alleged that defendant inflicted great bodily injury under Penal Code section 12022.7, subdivision (a). The complaint further alleged that defendant had suffered three prison priors within the meaning of Penal Code section 667.5, subdivision (b).

On December 18, pursuant to a plea agreement, defendant pled no contest to count 2 (hit and run driving resulting in serious bodily injury), and admitted the great bodily injury allegation. Under the terms of the agreement, the parties agreed that defendant would be sentenced to the low term of two years, plus three years for the great bodily injury enhancement. Moreover, the parties agreed that defendant would be ordered to pay actual restitution. Defendant also agreed “to waive and give up any right to appeal from any motion I may have brought or could bring and from the conviction and judgment in my case since I am getting the benefit of my plea bargain.”

On January 18, 2019, in accordance with the plea agreement, the trial court sentenced defendant to five years in prison, and dismissed the other counts and allegations. The court also imposed \$300 in restitution fines under Penal Code sections 1202.4 and 1202.45. The court stayed the restitution fine imposed under Penal Code

section 1202.45. Moreover, the court awarded defendant 62 days of custody credits (54 actual days and 8 conduct days under Pen. Code, § 2933.1<sup>1</sup>).

B. FACTUAL HISTORY

The parties stipulated that the police reports and medical records provided the factual basis for defendant's guilty plea.

According to the police report, defendant had been given permission to sleep in a friend's car because he was homeless. At some point, defendant snuck into his friend's home and took the keys; defendant drove away with the car without permission. The friend and three other people drove around until they found defendant in the car; they pursued. When defendant was stopped in traffic, someone got out of the pursuing car and stood behind the car driven by defendant. Defendant reversed and ran over the victim with the rear tires. Defendant then made a u-turn and drove away. Although there are no medical records on appeal, a police report stated that Dr. Edward Kwon, the treating physician, noted that the victim had "sustained a fractured left hip, ankle, and heel. [The victim] sustained a laceration on his left leg that was approximately five inches in length. He also had multiple abrasions on his right eyebrow, cheek and chin. There were areas of road rash on his hands, right shoulder and left knee."

When defendant was arrested, he stated that he did not realize that he had run over the victim. When the officer told defendant that he had, defendant's "eyes started

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<sup>1</sup> The clerk's minutes and abstract of judgment mistakenly provide that the eight days of conduct credits was awarded under Penal Code section 4019, instead of Penal Code section 2033.1.

watering and his voice started trembling. [Defendant] asked if the victim was going to be okay. [Defendant] appeared to be genuine and truthful.”

## **DISCUSSION**

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record. Pursuant to *Anders*, counsel identified the following issues to assist the court in its search of the record for error:

1. Whether the complaint’s listing of the applicable penalty section of the charge, subdivision (b)(2) of Vehicle Code section 20001, instead of the substantive section of the charge, subdivision (a) of Vehicle Code section 20001), was prejudicial error.

2. Whether the change of plea form’s written mistake noting a plea to “PC 2001(b)(2)” instead of “VC” was prejudicial error, when the correct code was noted below in the agreement section of the form.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error, considered the issues listed by appellate counsel, and find no arguable issue for reversal on appeal.

**DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

RAMIREZ  
P. J.

FIELDS  
J.